

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D. C. 20460

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OFFICE OF
AIR AND RADIATION

James M. Lents, Ph.D.
Executive Office
South Coast Air Quality
Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

Dear Dr. Lents:

In your letter of August 19, 1992, the South Coast Air Quality District requests EPA to issue an interpretation of the term "stationary internal combustion engines" to include portable internal combustion engines and to exclude these from the definition of nonroad engines or vehicles set forth in section 209 of the Clean Air Act. We regret the delay in responding, but we wanted to respond as adequately as possible which requires coordination between several offices. The internal combustion engines at issue include portable electric generators, compressors and other sources which are operated in a stationary manner. You note that while these types of sources are mounted on wheels or skids merely to facilitate transport from one location to another, they are intended to be, and in fact are, operated in a fixed position. The District is concerned about its ability to continue to regulate stationary internal combustion engines that are 50 horsepower and above.

Although we cannot issue at this time an interpretation of the term "stationary internal combustion engines" as requested, the District is not preempted by section 209(e) from regulating such sources. EPA is considering proposing regulations to define nonroad engines to include all engines with power output below 175 horsepower. A draft of the rulemaking proposal is currently being reviewed by the Office of Management and Budget. Any final definition of "nonroad engines" promulgated will consider all public comments received on the proposal. However, States and local jurisdictions may continue to impose restrictions on such sources as stationary sources until the effective date of the regulations. EPA believes that the preemption, if any, will then apply only to those internal combustion engines that are manufactured after the effective date of the regulations.

As you are aware, the Clean Air Act Amendments of 1990 have given EPA explicit authority to set emissions standards for "nonroad" engines as part of the Agency's Title II mobile source program. See Clean Air Act, section 213. Unlike the South Coast,

which has adopted permitting provisions covering some of its nonroad sources, most jurisdictions do not regulate nonroad engines. Although these sources account for substantial emissions, they escape control under either Title I or Title II programs. To address this omission, EPA is in the process of developing nation-wide, tail-pipe emissions standards for many different types of internal combustion engines utilizing its new authority under section 213. For instance, early this year, EPA intends to propose emissions standards for diesel nonroad engines of 50 horsepower and above. This new standard and others to follow will ensure that emissions from internal combustion engines in temporary generators, moveable cranes, and other nonroad engine applications are substantially reduced at the cheapest and most effective point -- at the time of manufacturing. Moreover, the Title II standards reduce emissions from all nonroad engines nationwide, whether subject to a local permitting program or not.

In the 1990 Amendments, Congress also changed the definition of stationary source applicable to the various permitting provisions in Title I. Specifically, in section 302(z), Congress excluded from the definition of stationary source "those emissions resulting from a nonroad engine or nonroad vehicle as described in section 216." At this point in time, EPA has not fully determined the extent to which this language precludes regulation of nonroad engines under Title I programs.

EPA may be proposing under its Title II regulations to include all internal combustion engines under 175 horsepower as nonroad engines. Further, EPA may be soliciting comments, as part of the proposal, on whether to limit any preemption to engines that are subject to a manufacturer's emission limitation established under section 213. Under this interpretation, engines manufactured after the promulgation of these regulations would not be considered excluded as a stationary source until they are in fact subject to an emission limitation established under section 213. This interpretation would avoid a regulatory gap which would otherwise exist between the period these regulations are promulgated and when all nonroad engines are covered by emission standards established under Title II.

In any case, the District retains the authority to impose in-use restrictions such as limits on hours of use on these and other nonroad engines. Furthermore, these engines may be subject to State regulation under section 209(e)(2). The draft proposal also suggests that even where an engine is found to be a nonroad engine for Title II purposes in the manufacturing stage, States may in certain circumstances retain authority to regulate these engines as stationary sources in-use where such engines are in fact used primarily as stationary internal combustion engines (see section 111(a)(3)). The District may consider commenting on this proposal when it is published.

Therefore, at this time, we cannot issue an interpretation, as you request, that the term "stationary internal combustion engines" includes portable engines and that these engines are not nonroad engines or vehicles within the meaning of section 209. We believe, however, that at a minimum the District may continue to regulate all engines manufactured before the final promulgation of regulations under Title II defining "nonroad engine." Further, the District may retain authority to impose in-use regulations on nonroad engines. The proposal addressing nonroad engines may address these issues more clearly and you may consider commenting on the proposal when it is published.

If you or your staff have any questions regarding this letter, please contact me or Clara Poffenberger of the Stationary Source Compliance Division at (703) 308-8709.

Sincerely,

/s/

John S. Seitz
Director
Office of Air Quality Planning
and Standards

cc: William Tyndall, OGC
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